

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 05-cv-10740

Michael E. Eller

v.

Luis Spencer

CLERK'S CERTIFICATE

I, Sarah A Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the copies of the original electronic pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 6/9/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on June 20, 2005.

Sarah A. Thornton, Clerk of Court

By: *Jeanette Ramos*
Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled
case is hereby acknowledged this date: 6/20/05.

R. Borchard

Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-10740-DPW

Eller v. Spencer

Assigned to: Judge Douglas P. Woodlock
Cause: 28:2254 Petition for Writ of Habeas
Corpus (State)

Date Filed: 04/08/2005
Jury Demand: None
Nature of Suit: 535 Death
Penalty - Habeas Corpus
Jurisdiction: Federal Question

Petitioner

Michael E. Eller

represented by **Michael E. Eller**
MCI Norfolk
P.O. Box 43
Norfolk, MA 01464
PRO SE

V.

Respondent

Luis Spencer

represented by **Maura D. McLaughlin**
Office of the Attorney General
Criminal Bureau, Appellate
Division
One Ashburton Place, 18th Floor
Boston, MA 02108
617-727-2200, ext 2857
Fax: 617-727-5755
Email:
maura.mclaughlin@ago.state.ma.us

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
04/08/2005	•1	MOTION for Leave to Proceed in forma pauperis by Michael E. Eller.(Jenness, Susan) (Entered: 04/13/2005)
04/08/2005	•2	PETITION for writ of habeas corpus pursuant to 28:2254 \$ 0.00, receipt number 0.00, filed by Michael E. Eller.(Jenness, Susan) (Entered: 04/13/2005)
04/08/2005	•3	PETITION for writ of habeas corpus pursuant to 28:2254 \$ 0.00, receipt number 0.00, filed by Michael E. Eller. (Case filed with 2 petitions one of which was drafted by the petitioner).(Jenness, Susan) (Entered: 04/13/2005)
04/08/2005	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Dein. (Jenness, Susan) (Entered: 04/13/2005)
04/19/2005	•4	Judge Douglas P. Woodlock : ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND ORDER TO TREASURER'S OFFICE entered: 1 Motion for Leave to Proceed in forma pauperis is denied. Eller has made an insufficient showing that he is without assets to pay the \$5.00 filing fee because he appears to have in excess of \$100 in his prison account. Petitioner is Ordered to pay the \$5.00 filing fee within forty-two (42) days of the date of this Order, or in the alternative, he shall submit evidence, within that forty-two (42) day period, that he is unable to access the funds in his prison account. Failure to comply with this Order will result in dismissal of this action. ORDER TO PRISON: The Treasurer's Office at M.C.I. Norfolk shall issue a check for \$5.00, in payment of the filing fee in the above captioned matter. The check shall be made payable to the Clerk,

		U.S. District Court, and shall be sent directly by the Treasurer's Office to this Court. This Order is contingent upon 1) authorization and request by Petitioner Eller for the issuance of the a check in the amount of \$5.00 for the purpose of paying the filing fee; and 2) such funds being available in Petitioner Eller's prison account. If Petitioner Eller is not allowed access to either his personal and/or savings prison account funds, the Treasurer's Office shall provide this Court with an explanation why such funds are unavailable to the Petitioner. (Greenberg, Rebecca) (Entered: 04/19/2005)
04/19/2005	• 5	Judge Douglas P. Woodlock : ORDER entered. SERVICE ORDER re 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rcpt of this order. (Greenberg, Rebecca) (Entered: 04/19/2005)
04/21/2005	• 7	Receipt for Docket entry #5. (Nici, Richard) (Entered: 04/26/2005)
04/22/2005	• 6	Receipt for Docket entry #4. (Nici, Richard) (Entered: 04/25/2005)
05/09/2005	•	Receipt#64079 \$5 for Petition for Writ of Habeas Corpus. (Nici, Richard) (Entered: 05/10/2005)
05/11/2005	• 8	Respondent's MOTION to Dismiss petition for writ of habeas corpus by Luis Spencer.(Nici, Richard) (Entered: 05/12/2005)
05/11/2005	• 9	MEMORANDUM in Support re 8 MOTION to Dismiss filed by Luis Spencer. (Nici, Richard) (Entered: 05/12/2005)
05/19/2005	• 10	ANSWER to Complaint by Michael E. Eller.(Nici, Richard) (Entered: 05/19/2005)
06/01/2005	• 11	Judge Douglas P. Woodlock : MEMORANDUM

		AND ORDER entered granting <u>8</u> Motion to Dismiss (Woodlock, Douglas) (Entered: 06/01/2005)
06/01/2005	<u>12</u>	Judge Douglas P. Woodlock : ORDER entered. ORDER DISMISSING CASE.(Rynne, Michelle) (Entered: 06/01/2005)
06/09/2005	<u>13</u>	NOTICE OF APPEAL by Michael E. Eller. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 6/29/2005. (Nici, Richard) (Entered: 06/13/2005)
06/09/2005	<u>14</u>	Application for certificate of Appealability from District Court by Michael E. Eller.(Nici, Richard) (Entered: 06/13/2005)
06/14/2005	<u>15</u>	Judge Douglas P. Woodlock : Electronic ORDER entered denying <u>14</u> Motion certificate of appealability (Woodlock, Douglas) (Entered: 06/14/2005)